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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,427	10/22/2003	Wolfgang Wolff	H 5165 PCT/US	7828

55495 7590 06/09/2006

DANN DORFMAN HERRELL AND SKILLMAN  
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PHILADELPHIA, PA 19103-2307

EXAMINER
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ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/691,427	WOLFF ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eisa B. Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23 and 25-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23 and 25-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

- 1 This action is responsive to the amendment filed on May 16, 2006.
- 2 The cancellation of claims 24 is acknowledged. Pending claims are 23 and 25-37.
- 3 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May/16/2006 has been entered.

### NEW GROUND OF REJECTION

#### *Claim Rejections - 35 USC § 103*

- 4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23 and 25-37 are rejected under 35 U.S.C. 103(A) as being unpatentable over Madrange et al. (US 5,143,518) in view of Cottard et al. (US 2001/0023514 A1).

Madrange et al. (US' 518) teaches a hair dyeing composition comprising oxidation dye precursors (see col. 12, line 60-61), dialkyl polysiloxanes such as dimethyl polysiloxane and amodimethicone as claimed in claims 23-27 (see col. 2, line 45 and col. 31, claim 12), primary intermediate (oxidation base) of 5-aminoindole (indole derivative) as claimed in claims 31-32 (see col. 13, line 49), secondary intermediates (couplers) as claimed in claim 33 (see col. 12, lines 65-68), direct dyes (substantive dye) as claimed in claim 34 (see col. 14, line 17),

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quaternary ammonium compound of trimethylalkyl(2<sub>20</sub>-C<sub>22</sub>) ammonium chloride and dimethyl dilauryl ammonium chloride as claimed in claim 23 and 35-36 (see col. 4, lines 40-59 and col. 5, lines 16-24) and oxidizing agent (see col. 15, line 43), Madrange et al. (US' 518) also teaches a method for dyeing hair comprising applying to the hair the dyeing composition as described above after mixing with the oxidizing agent and the mixture is left on hair for a sufficient time and after which the hair is rinsed and dried wherein the reference's method is similar to those claimed in claim 37 (see col. 15, lines 50-68 and col. 16, lines 1-2).

The instant claims differ from the reference by reciting a kit comprising amphoteric polymers.

However, Madrange et al. (US' 518) teaches a hair dyeing composition comprising polymers such as cationic homopolymers of dimethyldiallylammonium chloride (Merquat 100) and cationic copolymer of dimethyldiallylammonium chloride with acrylamide (Merquat 550) (see col. 12, lines 40-45).

Cottard et al. (US' 514 A1) in analogous art of hair dyeing formulation, teaches a composition comprising amphoteric co-polymers of diallyldimethylammonium chloride/ acrylic acid (Merquat 280) and amphoteric co-polymer of dimethyldiallylammonium chloride/acrylic acid/acrylamide terpolymer (Merquat Plus 3330) as claimed in claims 23 and 28-30 (see page 13, paragraphs 0253-0258). Cottard et al. (US' 514 A1) also teaches a multi-compartment dyeing devices or kits which are similar to the kit as claimed (see page 23, claim 81). Cottard et al. (US' 514 A1) also teaches cationic polymers such as homopolymers of dimethyldiallylammonium chloride (Merquat 100) and cationic copolymer of dimethyldiallylammonium chloride with acrylamide (Merquat 550) (see page 10, paragraph, 0206). Furthermore, Cottard et al. (US' 514

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A1) teaches the equivalence between the cationic and amphoteric polymers in the dyeing composition (see page 16, paragraph, 0314).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Madrange et al. (US' 518) by replacing the cationic polymers with the amphoteric co-polymers of diallyldimethylammonium chloride/acrylic acid (Merquat 280) and amphoteric polymer of dimethyldiallylammonium chloride/acrylic acid/acrylamide terpolymer (Merquat Plus 3330) as taught by Cottard et al. (US' 514 A1) to arrive at the claimed invention. Such a modification is obvious because the primary reference of Madrange et al. (US' 518) suggests the use of cationic polymers in a dyeing composition. Cottard et al. (US' 514 A1) clearly teaches the equivalence between cationic and amphoteric polymers in the dyeing composition, andm, thus, a person of the ordinary skill in the art would be motivated to replace the cationic polymers of Madrange et al. with the amphoteric polymers of Cottard et al. to arrive at the claimed invention and would expect such a composition be similarly useful and applicable to the analogous dyeing composition taught by Madrange et al. in the absence of contrary.

***Response to Applicant's Arguments***

Applicant's arguments with respect to claim rejections under 35 U.S.C. 103(a) have been considered but are rendered moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

June 7, 2006